of the court to affirm the judgment of the Civil Service Commission?

5. If appellant says it was error to strike the transcript, does he not by virtue of that position concede that it ought now to be considered as a part of the record?

The brief of the appellee, changing the usual order for filing briefs, will be filed on or before Monday, March 26, 1945; reply of counsel for appellant to be filed within one week after the filing of brief for counsel for the appellee; rejoinder of counsel for appellee to be filed within five days after the filing of brief of counsel for the appellant. These dates may be changed by written agreement of counsel filed with the Clerk of this Court. Copies to be served in accordance with the rules of this Court.

IN THE SUPREME COURT OF MISSISSIPPI

No. 35,803

(Opinion rendered April 23, 1945)

15581 IN BANC:

J. R. McLEOD

vs.

CIVIL SERVICE COMMISSION OF JACKSON, MISSISSIPPI

SMITH, C. J.:

The appellant was a member of the police force of the City of Jackson, Mississippi. He was discharged by the Mayor and Commissioners of the City. An order of the City's Civil Service Commission approving this discharge was affirmed by the court below, and the appellant has brought the case to this Court.

The record filed by the Civil Service Commission in the court below includes a stenographer's transcript of evidence heard by the Commission.

When the case came on for trial in the court below, several motions were filed, among which is one by the appellee to strike the transcript of the evidence heard by the Civil Service Commission from the record, and one by the appellant for a trial by a jury. These motions were heard and decided together. The one for the appellee was sustained, and the one for the appellant was overruled, and a judgment was then rendered for the appellee, all of which appear in the same order or judgment.

The appellee challenges the efficacy of the appellant's appeal bond for this appeal, the constitutional validity of Chapter 208, Laws of 1944, which governs here, and the right of the appellee to an appeal to this Court. One of the appellant's complaints is the overruling of his motion for a jury trial.

The challenge of the constitutional validity of this statute is without substantial merit, and while no appeal is granted by it from the Circuit Court to the Supreme Court, such an appeal is within the provision of Section 1147, Code of 1942. The Civil Service Commission created by this statute is an agency of the municipality it serves. It has a number of duties to perform, one of which is, under Section 10 of the statute, to investigate the discharge of a policeman by the municipal authorities and determine whether or not the discharge was made for political or religious reasons or in good faith for cause. In other words, it is an agency of the municipality for enforcing the Civil Service requirements of the statute, and makes, when called on so to do, the City's final decision as to whether a policeman shall be discharged. The parties to such controversy from its inception to its final decision by the City's Civil Service Commission are the policeman and the City in its corporate capacity. This being true, the obligee in the appellant's appeal bond should have been the City of Jackson instead of, as here is, the Civil Service Commission of Jackson, Mississippi. This defect in the bond, however, is cured by Section 1673, Code of 1942.

The statute does not provide for the making of a transcript of the evidence before the Civil Service Commission, a part of the record on an appeal to the Circuit Court,

but expressly provides that "the accused shall have the right of trial by jury;" i. e., a trial de novo before a jury under the guidance and control of the trial Judge, each of these branches of the court discharging the same functions that it always does in trials therein. The appellant's motion for a jury trial was not necessary, for in the absence of waiver of that right, it was the duty of a trial Judge to try the case only with the assistance of a jury. For the error committed by the court below in trying this case without a jury, its judgment must be, and is

Reversed and Remanded.

J. R. McLeod

vs.

Civil Service Commission

Assignment of Errors

Comes the appellant in the above styled cause and assigns as error committed on the part of the Circuit Court of the First District of Hinds County, Mississippi, at the trial of said cause therein, in the following particulars:

1. The court erred in overruling the appellant's motion to quash and dismiss the charges and accusations against him, and to re-instate him in his former position as a policeman of the City of Jackson, Mississippi. Transcript, 275½.

2. The court erred in overruling the appellant's motion for a trial de novo before a jury. Transcript, 276.

3. The Court erred in overruling appellant's motion to strike all pleadings and proceedings filed on the part of and in behalf of the Civil Service Commission. Transcript, pages 272, 273 and 274.

4. The Court erred in overruling the appellant's motion to amend his notice of appeal. Transcript, 275.

5. The Court erred in sustaining the appellee's motion to strike the testimony taken before the Civil Service Commission. Transcript, pages 267, 268 and 269.

6. The Court erred in sustaining the appellee's motion to strike. Transcript, pages 270 and 271.

7. The Court erred in refusing the appellant any kind of a trial before a jury as provided by Chapter 208, Laws of 1944.

8. The Court erred in affirming the judgment of the Civil Service Commission, Transcript, pages 239 to 244, inclusive, said judgment of the Circuit Court, Tr., pages 277 and 278, being erroneous in the following particulars:

(a) It is contrary to the overwhelming weight of the evidence.

(b) It is contrary to the law applicable to the case.

(c) It is contrary to the overwhelming weight of the evidence and to the law applicable to the case.

(d) It denies to the appellant rights, privileges and immunities given and guaranteed to him by the laws and the Constitution of the State of Mississippi, and by the laws and Constitution of the United States.

(e) The judgment abridged the privileges and immunities of the appellant as a citizen of the United States, denied to him equal protection of the laws and deprives him of his liberty and property, without due process of law, in violation of the 14th Amendment to the Constitution of the United States.

(f) The judgment deprived the appellant of his liberty and property without due process of law, in violation of Section 14 of the Constitution of the State of Mississippi.

9. The judgment is not based or founded upon any evidence of any kind whatever and is wholly unsupported by any such evidence and amounts to no more than an arbitrary exercise of judicial power.

Respectfully submitted,

(Signed) JOHN G. BURKITT,
(Signed) W. E. GORE,
Counsel for the Appellant.

I, W. E. Gore, of counsel for the appellant in the above styled cause do hereby certify that I have this day delivered to Mr. Garner W. Green, of counsel for the appellee, a true copy of the foregoing assignment of errors.

Witness my signature this February 9, 1945.

(Signed) W. E. Gore.

IN THE SUPREME COURT OF MISSISSIPPI

No. 35,803

In Banc:

J. R. McLeod

vs.

Civil Service Commission of Jackson, Mississippi

Per Curiam:

Before proceeding further with this case, the Court desires additional briefs from counsel *addressed and confined* to the following questions:

1. Did the court below err in overruling the appellant's motion for a trial de novo before a jury?

2. What portion, if any, of the transcript of the proceedings before the Civil Service Commission remained in the record after the court below had sustained the appellee's motions to strike this transcript, or a portion of it, from the record?

3. If a sufficient portion of that transcript remained in the record from which this Court can say that the appellant was discharged by the City Commission from the police force because he had become a member of a labor union, and this Court should be of the opinion that membership in such a union tended to injure the public service, was therefore just cause for appellant's discharge, and in a jury trial the court should so instruct the jury, what harm, if any, was

done this appellant by the court below in refusing him such a trial?

4. After the court below declined to grant the appellant a jury trial and struck from the record the transcript of the proceedings before the Civil Service Commission, was it not incumbent on the appellant to introduce evidence before the court proceeded to a decision of the case? In other words, if he offered no evidence, was it not the duty of the court to affirm the judgment of the Civil Service Commission?

5. If appellant says it was error to strike the transcript, does he not by virtue of that position concede that it ought now to be considered as a part of the record?

The brief of the appellee, changing the usual order for filing briefs, will be filed on or before Monday, March 26, 1945; reply of counsel for appellant to be filed within one week after the filing of brief for counsel for the appellee; rejoinder of counsel for appellee to be filed within five days after the filing of brief of counsel for the appellant. These dates may be changed by written agreement of counsel filed with the Clerk of this Court. Copies to be served in accordance with the rules of this Court.

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

OCTOBER, 1945 TERM

No. 35,989

CITY OF JACKSON, *Appellant*

vs.

J. R. McLEOD

Assignment of Errors

The City of Jackson, Appellant, herein called City, respectfully represents that on the trial of the above entitled couse in the Circuit Court, Hinds County, First District,

Mississippi, manifest error occurred directly prejudicial to the City, which errors should be herein corrected, and of said errors so occurring, the following are assigned:

1

The Circuit Court should have sustained the City's motion for judgment non obstante, transcripts 21 and 22.

2

The Circuit Court should have sustained the City's motion for a new trial, transcripts 406 and 407.

3

The Circuit Court erred in not granting the City's motion for directed verdict, especially in this that it materially misconstrued its jurisdiction, saying:

> "Gentlemen, this Court will hold that the issue to be tried is whether or not the City Commission; that is, the Mayor and the two Commissioners, acted in good faith, and that what the Civil Service Commission did or did not do has no place in the trial of this case whatever. That is my understanding of what the Supreme Court said. That was not my idea of it in the beginning, but I have been corrected on it as I interpret the Supreme Court's opinion now." Transcript 130.

When the sole jurisdiction of the Circuit Court on this appeal under Section 10 of Chapter 208, Laws of 1944, provided:

> "The said circuit court shall thereupon proceed to hear and determine such appeal and the accused shall have the right of trial by jury; provided, however, that such hearing shall be confined to the determination of whether the judgment or order or removal, discharge, demotion or suspension made by the Commission (Civil Service Commission), was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds."

McLeod, in invoking the appellate jurisdiction of the Circuit Court specifically restricted his application therefor to the provision of the judgment and findings of the Civil Service Commission, transcript 109.

4

The Circuit Court erred in excluding from consideration by the jury of the following:

(a) The finding of the Civil Service Commission of the City of Jackson made pursuant to the hearing on July 11, 1944, especially that portion thereof reading:

> "We are mindful of the long and faithful services heretofore rendered by petitioner and the other employees affected by this decision, and have reached the conclusion that the best interests of the public will be promoted by reinstating any one or more of such employees to the same positions held by them respectively prior to their suspension and discharge provided such employees, within five days from the date hereof, will unqualifiedly renounce allegiance to and resign from membership in the labor union with which they became affiliated and will agree to hereafter refrain from becoming affiliated with any organization of a similar character. The governing body of the City of Jackson, therefore, is hereby ordered and directed to re-employ each and every one of said former employees upon their compliance with the conditions hereinabove stipulated and to thereafter certify to this Commission the action taken by it in compliance herewith, for approval or other appropriate action on the part of this commission. We further order and direct that such employees as are again employed *by* restored to full rights of seniority and pensions unaffected by their suspension and discharge but such employees as may be reemployed are held to be entitled to no remuneration covering the period during which they were not permitted to work."

(b) The ordinance of the City of Jackson reciting that appellee had not applied for reinstatement.

5

The proper discharge of official duty by Commissioners Hawkins and Taylor in the enactment of the ordinance of June 20, 1944, preclude relief despite the alleged conduct on the part of Mayor Walter A. Scott.

6

The Court erred in this proceeding in reinstating appellee and especially in declaring void each and every one of the (a) orders, (b) ordinances, (c) resolutions, and (d) the judgment of the Civil Service Commission, transcript 24.

7

The Circuit Court erred in admitting declarations of Walter A. Scott found at transcripts 367-369, whereto objections were made.

8

The Court erred in admitting the purposes undisclosed of defendant, McLeod and co-defendants, Bruton and Fulbright.

9

The Court erred in refusing, under the Constitution of Mississippi and of the United States, the inalienable right of the State of Mississippi, through its duly constituted officers to prescribe the qualifications of the police officers deemed essential for public welfare and thereover the Courts, under Mississippi's Constitution, are without right or judicial review, it being solely a question for the executive department as to whether or not an employee may become a member of a union. Said McLeod, not having so become, but having been precedently only a part to a preliminary organization, wherefrom due demand was made he refused to withdraw, claiming his rights to be paramount to those prescribed by the duly constituted authorities.

10

The Court erred in admitting all evidence whereto the City objected and its objection was overruled.

11

The Court erred in not excluding all evidence offered by McLeod whereto the City objected and whereasto the Court overruled the City's objection.

12

The Court erred in refusing Instruction No. "A" for the City, transcript 382.

13

The Court erred in refusing Instruction No. "B" for the City, transcript 382.

14

The Court erred in refusing Instruction No. "C" for the City, transcript 383.

15

The Court erred in refusing Instruction No. "D" for the City, transcript 383.

16

The Court erred in refusing Instruction No. "E" for the City, transcript 384.

17

The Court erred in refusing Instruction No. "F" for the City, transcript 384.

18

The Court erred in refusing Instruction No. "G" for the City, transcript 384.

19

The Court erred in refusing Instruction No. "H" for the City, transcript 385.

20

The Court erred in refusing Instruction No. "I" for the City, transcript 385.

21

The Court erred in refusing Instruction No. "J" for the City, transcript 386.

22

The Court erred in refusing Instruction No. "K" for the City, transcript 386.

23

The Court erred in refusing Instruction No. "L" for the City, transcript 387.

24

The Court erred in refusing Instruction No. "M" for the City, transcript 387.

25

The Court erred in refusing Instruction No. "N" for the City, transcript 388.

26

The Court erred in refusing Instruction No. "O" for the City, transcript 389.

27

The Court erred in refusing Instruction No. "P" for the City, transcript 389.

28

The Court erred in refusing Instruction No. "Q." for the City, transcript 390.

29

The Court erred in granting Instruction No. 1 for J. R. McLeod, transcript 391.

30

The Court erred in granting Instruction No. 2 for J. R. McLeod, transcript 391.

31

The Court erred in granting Instruction No. 3 for J. R. McLeod, transcript 392.

32

The Court erred in granting Instruction No. 4 for J. R. McLeod, transcript 392.

33

The Court erred in granting Instruction No. 5 for J. R. McLeod, transcript 393.

34

The Court erred in granting Instruction No. 6 for J. R. McLeod, transcript 393.

35

The oath which the union required McLeod to take, in these words:

> "I, ——— ———, pledge my honor to observe faithfully the constitution and laws of this local of the American Federation of State, County and Municipal Employees and the rules and regulations for the government thereof; not to make public any of the private proceedings of this local; to perform faithfully all the duties assigned to me; to support the products and services of organized labor by making purchases of such products and services; to so conduct myself at all times to bear true and faithful allegiance to the American Federation of State, County and Municipal Employees and to the labor movement in general.
>
> "I solemnly promise that I shall do all in my power to exalt and promote the cause of government service, aid in efforts to develop a more understanding public attitude toward public employment, and develop on the part of the general public a conviction of the value of public service."

divided his allegiance, or rather the City of Jackson, acting as it did, could so find and having so found, its finding is not subject to judicial review.

36

And for other causes to be assigned at the hearing.

Respectfully submitted.

CITY OF JACKSON,
(S.) W. E. MORSE,
(S.) GREEN & GREEN,
Attorneys.

I, Garner W. Green, of counsel for appellant, hereby certify that I have this day mailed, postage prepaid, to Messrs. John Burkett and W. E. Gore, Attorneys for appellee, each a true copy of the foregoing assignment of errors.

This 7th day of September, 1945.

(S.) GARNER W. GREEN.

STATE OF MISSISSIPPI,
Hinds County:

I, Tom Q. Ellis, Clerk of the Supreme Court of the State of Mississippi, do hereby certify that the above and foregoing pages contain a true and correct copy of Assignment of Errors, Questions Propounded by the Court, and Opinion of the Supreme Court of Mississippi in cause No. 35,803 J. R. McLeod versus Civil Service Commission of Jackson, Mississippi, and a true and correct copy of the Assignment of Errors in cause No. 35,989 City of Jackson versus J. R. McLeod, all of which appear of record in this office.

Witness my signature and seal of office, this the 14th day of May, 1946.

TOM Q. ELLIS,
Clerk, Supreme Court of Mississippi.
By MARY GODHOLD, D. C. [SEAL.]

IN THE SUPREME COURT OF THE UNITED STATES

J. R. McLeod, *Petitioner,*

vs.

City of Jackson

I, Virgil Griffith, Justice of the Supreme Court of the State of Mississippi, who as organ of that Court delivered the controlling opinion in the above entitled cause, do hereby certify that in disposing of said case, there was no Federal question, either under Amendment One or Amendment Fourteen to the Federal Constitution, considered or decided, the decision of the Court in reversing said judgment being entirely upon questions of local law. Under settled practice in Mississippi, no Constitutional question is usually considered unless the controversy demands its decision and in this case, that rule was followed and applied.

Witness my signature this the 13th day of May, 1946.

Virgil A. Griffith,
Justice.

State of Mississippi,
County of Hinds:

I, Tom Q. Ellis, Clerk of the Supreme Court of the State of Mississippi, said court being a court of record and having a seal, do hereby certify that Honorable Virgil A. Griffith whose genuine signature appears to the foregoing attestation, is now and was at the date thereof Justice of the Supreme Court of the State of Mississippi, and that the said Virgil A. Griffith is now, and was at the date of said attestation, duly commissioned and qualified.

Witness my signature and seal of office, at Jackson, Mississippi, this the 14th Day of May, 1946.

Tom Q. Ellis,
Clerk, Supreme Court of Mississippi.
By Mary Godhold, D. C. [seal.]

APPENDIX "B"

CHAPTER 208

Senate Bill No. 127

An Act to create a board of civil service commissions in all municipalities of the state, operating under a commission form of government, having a population of not less than fourteen thousand (14,000), according to the federal census of 1940, and having a full time fire and police department having paid members; to provide a civil service system based upon examination and investigation as to merit, efficiency and fitness for appointment, employment, and promotion of all officers and men appointed in said fire and police department and respective cities, and other purposes.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi,* That there is hereby created in every municipality of the state, operating under a commission form of government, having a population of not less than fourteen thousand (14,000), according to the federal census of 1940, or having a population of not less than twenty-four thousand (24,000), according to the federal census of 1940 and situated in counties having a national military park, under whatever form of government, and having a full paid fire and police department, having paid members, a civil service commission which shall be composed of three members.

Appointment, Qualifications, Term of office.

The members of such commission shall be appointed by the city commission, and shall be three in number, and shall serve without compensation. Provided, however, that no person shall be appointed a member of such commission who is not a citizen of the United States, a resident of such city for at least five years immediately preceding such appointment, and an elector of the county wherein he resides. The terms of office of such commissioners shall be for six years, except that the first three members shall be appointed

for different terms, as follows; one to serve a period of two years, one to serve a period of four years, and one to serve a period of six years. Any member of such commission may be removed from office for incompetency, incompatability, dereliction of duty, or other good cause, by the appointing power. Provided, however, no member shall be removed until charges have been preferred in writing and a full hearing before the appointing power. Provided, further, that any member being so removed shall have the right of appeal, any time within thirty (30) days thereafter, to the circuit court and may demand a jury and such trial shall be confined to the determination of whether the order of removal, made by the appointing power, was, or was not, made in good faith and for cause. That two members shall constitute a quorum and the votes of any two members shall constitute a majority and be sufficient for the decision of all matters and transactions. This act shall not apply to cities operating under special charter and in which there is located a state supported college for women.

Those subject to civil service

SEC. 2. The provisions of this act shall apply to all municipalities of the state, as above set out, and all incumbents, and future appointees shall be subject to civil service, except, however, those appointees now and hereafter serving as extra members.

Appointment, promotions, discharges, etc.

SEC. 3. The provisions of this act shall include all full paid employees of the fire and/or police departments of each municipality coming within its purview, including the chiefs of those departments, all appointments to and promotions in said departments shall be made solely on merit, efficiency, and fitness, which may be ascertained by open competitive examination and impartial investigation. No person shall be reinstated in, or transferred, suspended, or discharged from any place, position or employment contrary to the provisions of this act.

SEC. 4. Immediately after appointment of the commission, which shall not be more than thirty (30) days after effective

date of this act, the commission shall organize by electing one of its members chairman, and hold regular meetings at least once each month, and such additional meetings as may be required for the proper discharge of their duties.

They shall appoint a secretary and a board of examiners, which board shall consist of the fire chief, the police chief, and a third member to be named by the commission, all of whom shall serve without compensation. The secretary shall keep the records and preserve all reports made to the commission, and also a record of all examinations held under the direction of the board of examiners, and perform such other duties as the commission may prescribe. The members of the board and also the secretary are also subject to suspension and discharge in the same manner as the commissioners.

Duties of the commission.

SEC. 5. It shall be the duty of the commission to make suitable rules and regulations not inconsistent with the provisions of this act. Such rules and regulations shall provide in detail the manner of conducting examinations, appointments, promotions, transfers, reinstatements, demotions, suspensions and discharges, and may also provide for any other matter connected with the general subject of personnel administration, and which may be considered desirable to further carry out the general purposes of this act. It shall have the power to conduct investigations, and make reports on all matters touching the enforcement and effect of the provisions of this act, and the rules and regulations prescribed hereunder. The commission shall have the power to investigate all complaints which must be reduced to writing, subpoena witnesses, administer oaths, and conduct hearings.

The commission shall maintain a list of applicants for positions.

SEC. 6. The commission shall keep a list of all members of the said police and/or fire department, and formulate methods of determining the relative qualifications of persons seeking employment in either of these two departments,

and give preference to those having the best qualifications, and to provide that men laid off because of curtailment of expenditures, reduction in force, and for like causes, shall be the last man or men, including probationers, that have been appointed to either the fire and/or police departments, until such reductions necessary shall have been accomplished. Provided, however, that in the event said department shall again be increased in number, those suspended shall be reinstated before any new appointments shall be made.

Adoption and induction of incumbents into civil service.

SEC. 7. For the benefit of the public service and to prevent delay, injury, or interruption therein by reason of the enactment of this act, all persons holding a position in the fire and/or police departments of any such municipality coming under the provisions of this act, including the chief thereof, when this act takes effect, who shall have served in such positions for a period of at least six months, last past, continuously, are hereby declared eligible for permanent appointment under civil service to the offices, positions or employments which they shall then hold, respectively, without examination or other act on their part, and not on probation, and every such person is hereby automatically adopted and inducted permanently into civil service, into such office, place, position or employment which such person then holds as completely and effectually to all intents and purposes as if said person had been permanently appointed thereto under civil service after examination and investigation. Provided, however, that those persons who have previously left their positions to participate in the armed forces of the United States shall have preference in reemployment and enjoy the rights and privileges of this act as if their services had not been terminated.

Applicants.

SEC. 8. All applicants for a position of any kind under civil service must be a citizen of the United States and an elector of the county in which he resides and must have so

resided for a period of at least three years immediately preceding the filing of his application.

Tenure of office and manner of discharge.

SEC. 9. The tenure of everyone holding an office, place, position or employment under the provisions of this act shall be only during good behavior, and any such person may be removed or discharged, suspended without pay, demoted or reduced in rank, or deprived of vacation privileges, or other special privileges, for any of the following reasons:

Incompetency, inefficiency, or inattention of duty; dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public, or a fellow employee, or any other act of omission, or commission tending to injure the public service.

Removal.

SEC. 10. No person in the classified civil service who shall have been permanently appointed or inducted into civil service under provisions of this act, shall be removed, suspended, demoted or discharged except for cause, except such persons as may be employed to fill a vacancy caused by the absence of a fireman or policeman while in service as a member of the armed forces of the United States, but as to other persons, and only upon the written accusation of the appointing power, or any citizen or taxpayer, a written statement of which accusation, in general terms, shall be served upon the accused, and a duplicate filed with the commission. The chiefs of the fire and/or police department may suspend a member pending the confirmation of the suspension by the regular appointing power under the act which must be within three days. Any person so removed, suspended, demoted or discharged may within ten days from the time of his removal, suspension, demotion or discharge, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The investigation shall be confined to the determination of the question of whether such removal, suspension, demotion or discharge was or was not

made for political or religious reasons and was or was not made in good faith or cause. After such investigation the commission may, if in its estimation the evidence is conclusive, affirm the removal, or if it shall find that the removal, suspension, or demotion was made for political or religious reasons, or was not made in good faith for cause, shall order the immediate reinstatement or re-employment of such person in the office, place, position, or employment from which such person was removed, suspended, demoted, or discharged, which reinstatement shall, if the commission so provides in its discretion, be retroactive, and entitle such person to pay or compensation from the time of such removal, suspension, demotion or discharge. The commission upon such investigation, in lieu of affirming the removal, suspension, demotion or discharge, may modify the order or removal, suspension, demotion or discharge by directing a suspension, without pay, for a given period and subsequent restoration of duty, or demotion in classification, grade, or pay, the findings of the commission shall be certified, in writing to the appointing power, and shall be forthwith enforced by such officer.

All investigations made by the commission pursuant to the provisions of this section shall be by public hearing, after reasonable notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his defense. If such judgment or order be concurred in by the commission or a majority thereof, the accused may appeal therefrom to the circuit court of the county wherein he resides. Such appeal shall be taken by serving the commission, within thirty days after the entry of such judgment or order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within ten days, after the filing of such notice, make, certify and file such transcript with such court. The said circuit court shall thereupon proceed to hear and determine such appeal and the accused shall have the right

of trial by jury; provided, however, that such hearing shall be confined to the determination of whether the judgment or order or removal, discharge, demotion or suspension made by the commission, was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds.

Fixing of compensation.

SEC. 11. The fixing of the compensation of every employee coming under the provisions hereof shall remain vested, by law, at and prior to the taking effect of this act, and nothing herein contained shall infringe upon the power and authority of any such person to fix the salaries and compensation of all employees employed hereunder.

Political services disregarded and prohibited.

SEC. 12. No person holding any office, place, position or employment subject to civil service, is under any obligation to contribute to any political fund or to render any political service to any person or party whatsoever, and no person shall be removed, reduced in grade or salary, or otherwise prejudiced for refusing so to do, but if such person actively participates in political activity in any primary or election in a municipality where employed, it shall be deemed cause for removal. No public officer, whether elected or appointed, shall discharge, promote, demote or in any manner change the official rank, employment or compensation of any person under civil service or promise or threaten so to do, for giving or withholding, or neglecting to make any contribution of money, or service, or any other valuable thing, for any political purpose.

SEC. 13. The only constituted authorities of each and every city coming within the purview of this act, shall provide the commission with suitable and convenient rooms and accommodations and cause the same to be furnished, heated and lighted and supplied with all office supplies and equipment necessary to carry on the business of the commission and with such clerical assistance as may be necessary, all of which is to be commensurate with the number of per-

sons in each such city coming within the purview of this act; and the failure upon the part of the duly constituted authorities to do so, shall be considered a violation of this act and shall be punishable as such.

SEC. 14. That the provisions of this act shall not apply to nor be applicable to municipalities in which there is located a harbor or port of entry where commodities are exported to foreign nations and where there is maintained a channel or harbor or port to a depth of not less than 26 feet.

Constitutionality of act.

SEC. 15. If any section, subsection, subdivision, sentence, clause or phrase of this act, shall for any reason be held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Repeal of conflicting acts.

SEC. 16. All acts and parts of acts in conflict with the provisions of this act are hereby repealed insofar as they conflict with the provisions of this act.

SEC. 17. That this act take effect and be in force thirty (30) days after its passage.

Approved March 22, 1944.

APPENDIX "C"

BEFORE THE BOARD OF POLICE COMMISSIONERS,
CITY OF ST. LOUIS, MISSOURI

CHARGES AND SPECIFICATIONS

vs.

PATROLMAN RICHARD T. MILLER

(Violating Rule 23, Section 342)

CHARGES AND SPECIFICATIONS

vs.

PATROLMAN BERNARD T. CASSERLY

(Violating Rule 23, Section 342)

DECISION BY THE BOARD

Pursuant to the rules of the Police Manual, revised and compiled by the Board of Police Commissioners, December, 1928, the Board, on December 18, 1945, held a hearing on the charges and specifications filed against Patrolmen Richard T. Miller and Bernard T. Casserly, both of the Traffic Squad of the Police Department of the City of St. Louis, Missouri.

Separate charges and specifications were filed against each of the said officers. The charges and specifications, however, are identical in each case and the issues are the same with respect to each officer. Therefore, our ruling can be made in one decision.

In Charge 1 the officers are charged with violating Rule 23, Section 342, of the Police Manual, revised and compiled by the Board in December, 1928, and the amendments thereto, by participating in the organization of a union.

There are two specifications contained in Charge 1. In Specification 1 the officers are charged with a continued participation, commencing on or about October 20, 1945, in organizing members of the Police Force into a union known as Local 549 of the American Federation of State, County

and Municipal Employees, a labor union affiliated with the American Federation of Labor.

In Specification 2 the officers are charged with participation in the organization of the above mentioned Local 549, and with attempting to induce other members of the Police Department of the City of St. Louis to become members of the Police Force a letter dated December 3, 1945, which is set out verbatim in the specification.

In Charge 2 the officers are charged with violating Rule 23, Section 342, of the Police Manual by becoming members of a union.

In Specification 1 under this charge the officers are charged with becoming members of the above mentioned Local 549 on or about the 20th day of October, 1945, and with now being members of the Local and with having taken an oath as members of the Local, which is contrary to, inconsistent with, derogatory of and repugnant to the oath which they took upon becoming members of the Police Force. The oath taken by the officers as members of the Local is set out in the specification as well as the oath taken by the officers in becoming members of the Police Force.

Rule 23, Section 342, of the Police Manual, revised and compiled by the Board of Police Commissioners, December, 1928, provides as follows:

> "342. Other Organizations Forbidden—All members and employes of the Force are forbidden, under pain of dismissal to participate in the organization of or to become members of any association, meeting, union, or any organization of members or employes other than the Police Relief Association, the Police Funeral Association and the St. Louis Police Pension Fund Association, each of which has been duly authorized to perform certain necessary functions."

Officers Miller and Casserly have each admitted their active participation in the organization of Local 549, and their continued membership in the Local from the inception of its organization. They are respectively the presi-

dent and secretary of the Local and have been in the very front of the organization movement.

The sole defense submitted by the officers to the charges filed is the claim that Rule 23, Section 342, is invalid because it deprives them of their alleged constitutional rights, under the State and Federal Constitutions, to organize and be members of a union, and because of the alleged claim that the rule is arbitrary and unreasonable.

Rule 23, Section 342, is within the statutory powers of the Board of Police Commissioners "to make such rules and regulations, not inconsistent with law, as it may judge necessary for the appointment, employment, uniforming, disciplining, trial and government of the police force." (Sec. 7695, R. S. No. 1939)

The rule in question has the same presumption of validity as is possessed by ordinances and statutes.

The officers claim that the rule violates Section 29 of Article 1 of the Constitution of Missouri of 1945, which reads as follows:

> "Employees shall have the right to organize and bargain collectively through representatives of their own choosing."

The section quoted does not specifically exclude or include the State or its agencies. It is a familiar and well settled principle of statutory and constitutional construction that words used in such instruments defining or limiting rights and interests do not apply to the government or governmental agencies unless they are expressly named or included by necessary implication.

The National Labor Relations Act which is the pattern for the language used in the constitutional provision expressly exempts employees of all governmental agencies. Statutes adopted in many states following the pattern of the Wagner Act provide for the same exemption.

Furthermore, members of the Police Force are not employees. They are specifically declared to be officers of the State of Missouri, as well as of the City of St. Louis. Sec. 7711, R. S. Mo. 1939. They are public officers charged with the enforcement and execution of the police powers of the state.

There is a vast distinction between public officers and employees. This distinction has been repeatedly pointed out in the decisions of our own Supreme Court.

We therefore conclude that Section 29 of Article 1 of the Constitution of Missouri of 1945 has no bearing on the issue before us.

The claim that Rule 23, Section 342, deprives the officers of their rights under the Federal Constitution is without substance. No right is granted under the Federal Constitution for state officers to organize or to be members of a union. The rule is directed at the conduct of public officers which is deemed inimical and dangerous to the public welfare. It is not a denial of free speech or any other right granted under the State or Federal Constitutions.

It is, nevertheless, claimed by the officers that the rule is arbitrary and unreasonable. Similar rules have been upheld as valid and reasonable by the courts of several states as applied to the field of public officers and employees of governmental agencies. We have been unable to find any case in which such a rule has been declared invalid.

Rule 23, Section 342, was enacted in 1920 and made its first appearance in the Police Manual adopted by the Board of Police Commissioners July 14, 1920, being numbered Rule 23, Section 375, in the 1920 manual. When that rule was adopted the Boston police strike, which had occurred in September of 1919, was undoubtedly fresh in the memory of the Board. That strike is part of our national history and is a matter of general knowledge. The strike of the Boston police grew out of its organization of a union affiliated with the American Federation of Labor, which the Police Commission of Boston refused to sanction.

Practically the entire membership of the force then went out on a strike with disastrous consequences to the city from unchecked criminal activities.

Governor Calvin Coolidge immediately called out the State Guard to police the city and an entirely new police force was organized. Governor Coolidge issued his famous statement, "There is no right to strike against the public safety by anybody, anywhere, anytime."

President Woodrow Wilson issued a public statement on the Boston strike, vigorously supporting the stand taken by Governor Coolidge. President Wilson said:

> "A strike of policemen of a great city, leaving that city at the mercy of an army of thugs, is a crime against civilization. In my judgment the obligation of a policeman is as sacred and direct as the obligation of a soldier. He is a public servant, not a private employee, and the whole honor of the community is in his hands. He has no right to prefer any private advantage to public safety."

The Executive Council of the American Federation of Labor which, as we understand, is the highest legislative body of that organization has recognized the dangers inherent in the situation and has refused to grant charters to unions of police officers. We cannot understand how that ruling has been by-passed by the issuance of the charter to Local 549 through the American Federation of State, County and Municipal Employees.

But, it is claimed that the members of Local 549 are pledged by the terms of their charter to refrain from striking, and that thus this phase of the danger of union activity is removed or alleviated. It was admitted at the hearing that the Constitution and Laws of the above mentioned federation contains no prohibition against strikes.

History and common sense teach us that this self denial may be very temporary and fugitive. Particularly is this true when we consider that the right to strike is of the very essence and strength of the union movement. It is a right for which the unions have fought and sought recognition from the public and the courts. The great union organizations and their leaders have all taken the position that they will not permit any diminution of that right.

We need only to read today's newspapers to realize how sacred the right to strike is considered by the unions. In connection with present day labor troubles President Truman has proposed legislation to set up fact-finding boards, together with a provision that strikes would be illegal during a limited thirty-day fact-finding period. The proposed

legislation has met with bitter denunciation from the leaders of all national union organizations. Characteristic is the statement of Philip Murray, President of the CIO:

> "The United Steelworkers of America is firmly and unalterably opposed to any legislation which makes strikes unlawful even though for a limited time and penalizes strikers through criminal prosecution. Compulsion to work—regardless for how brief a period—is but the first step toward industrial serfdom."

The oath taken by Officers Miller and Casserly in becoming members of Local 549 requires them "at all times to bear true and faithful allegiance to the American Federation of State, County and Municipal Employees and to the labor movement in general."

There is necessarily implicit in this oath the duty to support the trade union objectives which are realized by the strike, the boycott and the picket line, the essential weapons of the union.

Even if we were to indulge ourselves in the fatuous belief that police officers as members of the union affiliated with the American Federation of Labor could forever deny to themselves the benefits which they would see being realized from day to day in the use of these weapons by their sister unions, is it possible to contend that they would also stand aloof and remain impartial in the controversies and conflicts which arise from the use of such weapons by their sister unions?

Unfortunately, as we all know, these major disputes often lead to violence and to situations in which police officers must maintain peace and order.

On the subject before us, Governor Phil M. Donnelly issued a historic statement on November 23, 1945. We quote the last three paragraphs of the statement:

> "At such times, emotions run high, reason abdicates and violence often results. The peace officer must be in a position that will be respected and above suspicion by both sides in such a controversy. He should never allow himself to be placed in a position where his

motives or his actions may be challenged. He should be above all accusations.

"History reveals the dangers inherent in the organizing of peace officers into unions. However mild the present objectives of such organizations or locals might be, no one can say how future events or future leadership might shape the policies and change the objectives. The better policy will be to avoid all semblance of temptation and danger and to adhere strictly to the highest and noblest ideals of the peace official, sworn to protect the public with his life if necessary.

"Only such individuals as are willing thus to consecrate themselves to the public welfare should become members of a police force. Only such members are worthy of their trust. If this is demanding a great deal of police officers, it should be remembered that theirs is a sacred trust and they are honored, respected and implicitly obeyed because they are selected to uphold that trust."

We are firmly convinced that membership in a union affiliated with a national labor organization involves an abdication of the high duties and responsibilities referred to by Governor Donnelly. We also believe that it would mean a loss to the police officers of public esteem and confidence.

But it is argued that a union such as that involved in the case before us is the sole effective agency through which necessary improvements in salaries and working conditions of police officers can be effected. This premise is emphatically denied. This Board has always been open and will always remain open to members of the police force and any committees they may select for discussion and consideration of grievances. It must, of course, be recognized that the Board of Police Commissioners is a governmental body which is subject to the limitations placed upon it by law. Salaries and hours of employment are fixed by the legislature. Nevertheless, there are adjustments which the Board can and will make in proper cases.

Neither can we indulge in the wholly unwarranted assumption that our legislature, our Governor or the City of

St. Louis, which pays the salaries of our police officers, will give police officers fair treatment only when they are subjected to the force and influence resulting from membership in a national labor union.

The reckless statement has been made and repeated that the organization of Local 549 has already provided benefits to members of the police force, as witness the uniform allowance made by this Board and the introduction of a bill in the legislature to increase salaries of the force. We cannot answer for the legislature as to what prompted the proposed bill. We do know, however, that, as a matter of fact, similar bills have been presented to the legislature at previous sessions before there was any union organization. A bill approving increases in salaries was enacted at the session of the legislature of 1944.

The matter of allowance for uniforms was under consideration by this Board before the Board had any knowledge of the union organization movement. Having reached the conclusion that such an allowance should be made and was within our legal powers, we did not deem it consistent with the high trust of our duties to defer action because there was a chance the union and its adherents might make capital out of such action.

Our Board has been serving for only six months. During that time many important problems have been presented in connection with the administration of the Police Department of Metropolitan St. Louis, to which we have given ungrudgingly our time and careful consideration. We are justly proud of the splendid personnel of the police force of our City. From the patrolmen to the commanders they are doing their duty day by day with a full sense of their responsibilities as public officers.

They are impressed with the fact that a police officer is something more than a job holder. He is charged with a public trust. He is a civilian soldier, bound by the soldier's code of loyalty, obedience and discipline. The unexcelled morale of the Department and the mutual confidence between all ranks have produced a splendid record of efficiency in law enforcement and crime detection, with all the resultant benefits to the welfare and security of our citizens.

The organization of Local 549 and membership in the local are fraught with serious dangers to the morale and efficiency of the Police Department. For the first time a police officer would be required to weigh his duties and oath as a police officer against his duties and oath as a member of the Union.

As a public officer he should be free from the dangers and distractions of such divided loyalties. Rule 23, Section 342, prevents such harmful tendencies and effects. It is a reasonable and valid regulation necessary and beneficial to the government and discipline of the police force.

We find from the evidence adduced at the hearing that Patrolman Richard T. Miller and Patrolman Bernard T. Casserly have violated and are continuing to violate Rule 23, Section 342, of the Police Manual, in the particulars set forth in Charges 1 and 2 and Specifications 1 and 2 of each of the said charges against each of the two police officers. We therefore find Patrolman Richard T. Miller and Patrolman Bernard T. Casserly and each of them guilty as charged in Charges 1 and 2 and Specifications 1 and 2 of each of the said charges filed respectively against the said officers, and we order and direct that Patrolman Richard T. Miller and Patrolman Bernard T. Casserly should each be and they are hereby dismissed from the Police Force of the City of St. Louis.

By the Board:

THOMAS H. COBBS,
FRANCIS L. GEORGE,
BEN L. LIBERMAN,
Members of the Board of Police Commissioners.

December 19, 1945.